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3. Deeds (§ 124*)—Estates Created—Fee Simple.—Where an estate was devised to three brothers in fee simple, with an additional limitation over that, in the event of one or more of them dying without issue, his or their shares should go to the survivor, and by deeds of partition among themselves they relinquish their interest in the tract devised, with covenants of general warranty and recitals that the land conveyed was an undivided tract set apart to them by will, and that the object of the covenants was to make deeds of partition to each one and to grant described parts. Held, that under Code 1904, § 2438, relating to the construction of deeds, and section 2439, fixing the effect of certain words of release, that the language and warranty in the deeds was effectual to invest the grantee in each of those deeds with the absolute fee-simple title to that part of the land devised covered by the respective deeds.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 344-355; Dec. Dig., § 124.* 4 Va.-W. Va. Enc. Dig. 434; 10 Va.-W. Va. Enc. Dig. 120.]

Appeal from Circuit Court, Giles County.

Action by J. B. Smith against W. L. Smith. Judgment for plaintiff, and defendant appeals. Affirmed.

W. B. Snider, for appellant.

Harman & Pabst, for appellee.

SHOEMAKER *v.* CHAPMAN DRUG CO. et al.

Sept. 14, 1911.

[72 S. E. 121.]

1. Fraudulent Conveyances (§ 107*)—Confidential Relations—Family Relations.—A sale of land by a father to his son will not be set aside as a fraud upon his creditors merely because of the family relation.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 347-350; Dec. Dig., § 107.* 6 Va.-W. Va. Enc. Dig. 572, 674.]

2. Fraudulent Conveyances (§ 61*)—Insolvency.—A grantor's insolvency will not render a sale invalid, unless it was made to hinder, delay, and defraud his creditors.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 138-158; Dec. Dig., § 61.* 6 Va.-W. Va. Enc. Dig. 557.]

3. Fraudulent Conveyances (§ 271*)—Evidence—Sufficiency.—Fraud is never presumed, and fraud in a conveyance should not be assumed on doubtful evidence or circumstances of mere suspicion.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Dig., §§ 796-798; Dec. Dig., § 271.* 6 Va.-W. Va. Enc. Dig. 502; 6 Va.-W. Va. Enc. Dig. 667.]

4. Fraudulent Conveyances (§ 271*)—Evidence—Burden of Proof.—Where a conveyance is attacked as fraudulent, the burden is upon the plaintiff, but, having established a prima facie case of fraud, the burden shifts, and the defendant must establish the bona fides of the transaction.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 796-798; Dec. Dig., § 271.* 6 Va.-W. Va. Enc. Dig. 505; 6 Va.-W. Va. Enc. Dig. 660.]

5. Fraudulent Conveyances (§ 300*)—Consideration—Recitals in Deed.—In a suit by creditors to set aside a conveyance as voluntary and fraudulent, recitals in the deed that the consideration has been paid are not sufficient to establish that fact.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., § 987; Dec. Dig., § 300.* 6 Va.-W. Va. Enc. Dig. 502; 6 Va.-W. Va. Enc. Dig. 659.]

6. Fraudulent Conveyances (§ 282*)—Evidence—Sufficiency—Knowledge of Grantee.—In a suit by creditors to set aside a deed as fraudulent, evidence held insufficient to show that the grantee was party to the fraudulent intent of the grantor.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig., §§ 817, 818; Dec. Dig., § 282.* 6 Va.-W. Va. Enc. Dig. 563, 660.]

7. Deeds (§ 200*)—Delivery—Evidence.—While a deed is presumed to have been delivered at the time of its date or acknowledgment, the actual time of delivery may be shown.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., § 601; Dec. Dig., § 200.* 4 Va.-W. Va. Enc. Dig. 406.]

Appeal from Circuit Court, Russell County.

Suit by James H. Shoemaker against John Shoemaker and others for partition. Upon the petition of the Chapman Drug Company and others a deed from Isaac Shoemaker to his son Bona Shoemaker was set aside, and Bona Shoemaker appeals. Reversed.

Routh & Routh, for appellant.

S. B. Quillen, Finney & Wilson, and *Burns & Kelly*, for appellees.

JOHNSON et al. v. McCoy.

Sept. 14, 1911.

[72 S. E. 123.]

1. Ejectment (§ 15*)—Title to Support Action—Claim from Common Source.—Where both parties in ejectment claim title from a

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes